

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12471 of 2004

ORAL ORDER:

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This writ petition is filed seeking a Certiorari to call for the records relating to surcharge order passed by the first respondent in Rc.No.2906/90-E dated 28.9.1991 as confirmed by the order of the A.P. Cooperative Tribunal in O.A.No.99 of 2002 dated 24.2.2004 and quash the same as arbitrary and illegal.

It appears, petitioner was the President of second respondent society and worked from 29.11.1981 to 28.11.1984 and again from 1987 to 1990. In the year 1991, 16 out of 2167 members of the society have made a complaint stating that the petitioner has committed certain irregularities. Basing on the said complaint, an enquiry under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') was conducted and liability was fixed on the petitioner and thereafter surcharge proceedings under Section 60 of the Act were initiated. The surcharge authority found that the petitioner is liable to pay Rs.44,890/- since he caused loss to the assets of the society. Questioning the surcharge order, petitioner carried the matter in appeal before the A.P. Cooperative Tribunal and Tribunal confirmed the orders passed by the surcharge authority. Aggrieved by the same, the present writ petition is filed.

The contention of the learned counsel for petitioner is that out of 2167 members of the society, only 16 members have made complaint against the petitioner, therefore, question of conducting enquiry under Section 51 of the Act does not arise. Section 51 contemplates application to be made by not less than 1/3rd members of the committee or not less than 1/5th total members of the society for conducting enquiry. In this case, only 16 members seems to have made complaint and enquiry under Section 51 of the Act was conducted, which itself is not tenable. Further, the surcharge authority gave finding contrary to the evidence on record. The Tribunal simply carried away by the findings recorded by the surcharge authority. It is an admitted fact that only 16 members out of 2167 members have made complaint for conducting enquiry.

I am of the opinion that such a petition or complaint could not have been taken for the purpose of conducting enquiry under Section 51 of the Act. Therefore, initiation of very proceedings is arbitrary and illegal and the proceedings under Section 60 of the Act which were passed basing on the enquiry under Section 51 of the Act is liable to be set aside on this ground alone. Under those circumstances, the impugned surcharge proceedings as confirmed by the appellate authority-A.P. Cooperative Tribunal are set aside.

However, the learned counsel for petitioner states that the petitioner has already deposited 3/4th amount i.e. 1/2 at the time of filing appeal before Cooperative Tribunal and 1/4th amount pursuant to the directions of this Court. Thus, the petitioner has already paid substantial amounts and is ready to pay remaining 1/4th amount within a period of three months from today.

In view of the above, I am of the opinion that the criminal proceedings launched against the petitioner shall not be proceeded with for the reason that the very proceedings initiated under Section 51 of the Act, which were concluded under Section 60 of the Act are not legal and valid.

In the result, the writ petition is allowed and the impugned surcharge proceedings passed by the first respondent in Rc.No.2906/90-E dated 28.9.1991 as confirmed by the order of the A.P. Cooperative Tribunal in O.A.No.99 of 2002 dated 24.2.2004 are set aside subject to above observation. No order as to costs.

C.V.RAMULU, J

Date: 18.7.2007
DA

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12471 of 2004

18.7.2007

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.12471 of 2004

Date: 18th July, 2007

Between:

Vankayalapati Suryanarayana

.. Petitioner

And

Deputy Registrar of Cooperative Societies,
Guntur, Guntur district & another.

.. Respondents